



**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**In re Application of:**

Aharoni et al.

**Serial No.:** 09/857,518

**Filed:** December 12, 2001

**For:** FRUIT FLAVOUR RELATED GENES  
AND USE THEREOF

**Confirmation No.:** 5679

**Examiner:** R. Kallis


**Group Art Unit:** 1638

**Attorney Docket No.:** 2183-4916US

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence along with any attachments referred to or identified as being attached or enclosed is being deposited with the United States Postal Service as First Class Mail on the date of deposit shown below with sufficient postage and in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

May 10, 2004  
Date

  
Signature

Betty Vowles  
Name (Type/Print)

**RESPONSE TO RESTRICTION REQUIREMENT AND SELECTION**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This communication is filed in response to the Office communication of April 8, 2004, having an initial period of response expiring on May 10, 2004.

Claims 1-40 and 43 are currently pending in the application and subject to a Restriction Requirement. Applicants elect, without traverse, to prosecute the invention of Group II containing claims 19-21, 34 and 43.

If applicants elected Group II, the communication requested that the applicants select two sequences; one sequence being from the group of SEQ ID Nos: 4, 16 and 27-30 and the other sequence being from the group of SEQ ID Nos: 31-34, 39-41 and 43. (See Office Action at page

3). The Examiner states that this selection of sequences is not an election of species, because each sequence constitutes an independent and patentably distinct invention. *Id.* Further, the Examiner notes that separate searches and consideration would be required for examination of each of the sequences. *Id.*

Applicants respectfully traverse the sequence selection. Applicants note that no statutory basis was provided for requiring applicants to select only two sequences for examination. Applicants respectfully point out that the Commissioner has partially waived the requirements of 37 CFR § 1.141 and will permit a reasonable number of sequences to be examined even though they might normally constitute independent and distinct inventions within the meaning of 35 U.S.C. § 121. *See*, MPEP 2434. Under this policy, up to 10 independent and distinct nucleotide sequences are to be examined in a single application without restriction. *Id.* As such, applicants respectfully submit that requiring the applicants to select only two sequences for examination cuts against the Office's own policy. Consequently, applicants should be allowed to select 10 sequences for separate searches and consideration.

The Office Action, at page 3, states that "Upon election of one of Group II, applicants should elect a single amino acid sequence from the group consisting of SEQ ID Nos: 4, 16, 27-30 . . . ." However, applicants respectfully note that SEQ ID Nos: 4 and 16 refer to nucleotide sequences; not amino acid sequences. SEQ ID Nos: 6 and 14 are amino acid sequences. Applicants presume that a typographical error in the Office Action led to 4 and 16 being recited as opposed to 6 and 14. In addition, with the exception of SEQ ID Nos: 4 and 16, all of the other SEQ ID Nos provided by the Examiner were sequences specifically recited in the selected claims of Group II. SEQ ID Nos: 6 and 14 are also recited in the elected claims. As such, applicants respectfully request that SEQ ID Nos: 6 and 14 be among the sequences from which the Examiner allows selection.

Although applicants believe (based on published Office policy) that they are entitled to the examination of up to 10 separate sequences, two sequences are provisionally selected in order to make this paper fully responsive to the Office Action. This selection is made without prejudice or disclaimer. In response to the Examiner's request, applicants provisionally select SEQ ID Nos: 6 and 31 for examination.

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Applicants note that SEQ ID No: 6 was not among the sequences from which the Examiner provided for selection. If the Examiner does not allow the examination of SEQ ID No: 6, applicants respectfully select SEQ ID No: 16 in the alternative.

### CONCLUSION

In light of the above election, applicants respectfully requests a prompt action on the merits of claims 19-21, 34 and 43. If there are any questions concerning the foregoing, or if the Office should determine that there are additional issues which might be resolved by a telephone conference, it is respectfully invited to contact applicants' undersigned agent.

Respectfully submitted,



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